

JUDGE BLACKSTONE IS REMOVED; MAY APPEAL

(Continued From First Page.)

House in a clear and able manner. They were all for removal, but contended that to accomplish this constitutionally three things must necessarily be done. One was to furnish the accused with charges, and the second to give reasonable notice, and the third to afford him an opportunity, after notice, to defend himself.

Along Similar Lines.

The debate was along exactly the same lines in the Senate, and all the speeches on both sides of the proposition were clear and strong. The vote in the Senate on the substitute offered by the minority, through Judge Sims, was, yes 10, noes 25. In the House on practically the same paper, presented by Mr. Page, ayes 22, noes 62.

Troublesome Case.

The case of Judge Blackstone, which arose about the middle of the session, upon a petition from citizens of Elizabeth City county, has given the Legislature a good deal of trouble and has cost the State heavily.

The charges at first formulated, alleged "Incompetency, immorality, and gross neglect of official duty," but the House Committee for Courts of Justice struck out the first one before the investigation was half over, the members being satisfied that the judge was competent. Judge Blackstone, at the hearing of his case before the committee, admitted one of the gravest specifications in the second charge, and from that moment his fate was sealed, so far as remaining on the bench by a vote of the Legislature was concerned.

John W. G. Blackstone was in former

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days looked upon as one of the most brilliant jurists on the Virginia bench, and his career in public life has been a most distinguished one. As chairman of the Courts of Justice Committee of the Legislature, he was for years an able and popular leader of that body and was invincible among the people of the Eastern Shore. It should be stated that his own people are still loyal to him and that lawyers and laymen came here in droves from Accomac and Northampton in the winter of 1907 to testify in his behalf. He was once county judge of Accomac, and upon the death of the late Judge Gunter he was elevated to the circuit bench. The fight on Judge Blackstone was started and prosecuted by people on this side of the bay, and many of his friends have at long last contended that there was much of political animosity behind it. It is almost certain that the deposed judge will endeavor to get his case before the Supreme Court in some form or other, but he declined to discuss the matter or night pending the final judgment of the Legislature, which will take place this afternoon.

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Sessions of the Two Houses

The Rev. Dr. F. T. McFadden, of the First Presbyterian Church, offered prayer in the House and the Senate. One of the prayers was presided over by Speaker Richard Evelyn Byrd. Mr. West, of Bedford, inquired if the Courts of Justice Committee was ready with a report on the Blackstone matter, and the chair replied that he was in possession of no information on the subject. Mr. Page, of the committee, said the chairman, Mr. Massie, was out of the House for the moment, but that he would appear in a short while and present a report.

Mr. Massie came in a moment later and submitted the following report and accompanying resolution of removal.

"The Committee for Courts of Justice for the House and Senate, in joint meeting, respectfully report that in the opinion of the committees the General Assembly may proceed at once to act upon the causes alleged for the removal of Judge J. W. G. Blackstone, judge of the Eleventh Judicial Circuit, and if satisfied of the existence and sufficiency of said causes, may at once remove him from office as judge of said circuit by a concurrent vote of a majority of all the members elected to both houses of the General Assembly."

"EUGENE C. MASSIE, Chairman."

"Resolved by the House of Delegates (the Senate concurring), That Judge J. W. G. Blackstone be, and he is hereby, removed from office as judge of the Eleventh Judicial Circuit of Virginia, on the following causes: Gross immorality and neglect of official duty, as set forth in the report of the committees."

"That this resolution be spread at length upon the journals of the House of Delegates and the Senate."

Massie Opens Up.

"I do not know whether this House desires any extended discussion of this question," said Mr. Massie in speaking for the report, "but I do know that there is no man here who is more opinion on the subject."

"It may be proper, therefore, for me to review briefly the reasons which led the majority of the committee to their conclusions."

Declaring that the conclusions were based upon the journals of the Convention, which had come down from former organic laws of the State, Mr. Massie proceeded to argue strongly that the procedure had been regular, and that all that was left to be done was to take the vote in the two houses of the General Assembly.

Mr. Massie explained at length the occasion for section 104 providing for the removal of judges, and he dwelt upon the right of the Legislature to remove in the present case without further evidence for or against the accused judge, and to bring it before him the debates of the convention of 1829-1830, and he referred to them many times during the course of his speech. From these debates he showed that there were many causes for which judges might be removed, and that the removal of Judge Blackstone was wholly within the hands of the Legislature. Among the many causes laid down in the books referred to were age, disease and others, and the speaker said that no other body save the Legislature could properly ascertain them.

Not Sitting as a Court.

"We sit here to-day," he said, "to determine whether Judge Blackstone shall be removed—I say we are not sitting as a court, but as a Legislature. We are not competent to sit as a court."

"The men who made this Constitution had some sense. It was never contemplated that we should sit here and take testimony and determine this matter by judicial procedure."

Judge Williams wished to know how the testimony taken by the committee could be officially transmitted to the members of the General Assembly, and Mr. Massie replied that it had come through the report of the committee.

"The sole question for this House," he declared, "is are you satisfied that there are causes sufficient for the removal of this judge?"

"When section 104 was put into the Constitution, it was done to provide some method of removing judges other than by impeachment. There is no doubt that we have proceeded properly and that we have followed every precedent in this State."

"No court can review our action, except to ascertain whether we acted within the limits of the Constitution; whether the accused was given twenty days' notice, and whether these causes were spread upon the journals of the two houses."

Cannot Inquire.

"Can the courts inquire into the motives of the Legislature in finding these causes? They have said out of their own mouths that they cannot."

"The article of the Constitution was put in for practical purposes and to permit the Legislature to remove judges. If we take the other view it would be impossible for the Legislature ever to remove a judge. Talk not to me about your legal critics. I cannot afford to listen to them. We are discharging our duty to the people of our State and to our God, as we see fit. I say that the convention, when it put section 104 in the Constitution, it meant to do something practical and to permit practical action by practical men. There is no plea here that any judge has been done this wrong. The answer is simply that of a lawyer—a lawyer delay. As practical and just—"

It behooves every member to ask, is there cause for removal, and then to vote accordingly with his conclusion on this point."

Page Substitute.

Mr. Page, of Hanover, offered the following resolution in the nature of a substitute:

"Resolved by the House of Delegates (the Senate concurring), That the General Assembly proceed to act upon the charges preferred against J. W. G. Blackstone, judge of the Eleventh Judicial Circuit, and that the Committees for Courts of Justice of the respective houses of the General Assembly proceed forthwith to take the evidence of witnesses with reference to the specific charges heretofore spread upon the journals of both houses and served upon said Blackstone, and that said committees be authorized and empowered to summon and require the attendance of witnesses, both for and against said specific charges and to employ such stenographic and other assistance as may be necessary in the premises, and make report without delay."

By Mr. Withers.

The following was offered by Mr. Withers:

"Resolved by the House of Delegates (the Senate concurring), That the Committee for Courts of Justice of the House and Senate shall sit jointly and at once take such testimony to prove or disprove the causes alleged for the removal from office of Judge J. W. G. Blackstone, judge of the Eleventh Judicial Circuit, and that the committees of both houses by resolutions looking to such action as they shall recommend."

Mr. Page's Position.

Mr. Page said he was sorry to differ with the majority of the committee, but he was afraid the proper legal course had not been followed. The member from Hanover went into ancient history, as had Mr. Massie, and dwelt upon the debates of early conventions.

"I stand here to say," continued the speaker, "that this man will be removed by the Legislature, but I say that he has held the scales of justice with an even hand between the high and the low, and when it comes here and pleads not guilty to the charges alleged against him he is entitled to twenty days' notice to meet these charges. I am not here as counsel for Blackstone. I expect to vote finally for his removal, but I contend that he is entitled to an investigation in accordance with the provisions of the Constitution."

"The procedure so far as followed here is to my mind like a jury acting on what they know instead of according to testimony adduced before them."

He said in order to make the procedure regular and to bring it within the provisions of the Constitution, he would summon two witnesses, examine them and dispose of the case at once.

Mr. Massie wanted to know if Judge Blackstone wished more witnesses would the gentleman from Hanover allow him to call them.

"I would allow him to summon as many as four," was the reply.

"How would you draw such a line?" was asked.

"I would proceed as sensible men should do in dealing with a plain and simple proposition," was the quick reply.

Withers' Strong Plea.

Mr. Withers, who is frequently heard on the floor, created great laughter by declaring that it was with "much timidity" that he arose to take part in the discussion, and he proceeded to state that he was not a lawyer, but was quite similar to that offered by Mr. Page. The member from Nansemond commenced by reading from the Constitution to show that no officer however humble, could be removed without first having "his day in court."

He contended that in order to properly remove a judge, he should be furnished with the charges against him, reasonable notice, and an opportunity to be heard in his own defense.

"The evidence which has been taken before the House committee," said Mr. Withers, "is not evidence in this procedure. The Constitution limits the omnipotent powers of the General Assembly in cases of removal of judges by saying that they shall only be removed for cause."

"It is one thing to say that this judge shall be removed for cause, but it is quite another to say whether that cause is sufficient for his removal."

"You cannot impeach a judge for mere personal immorality, but the Legislature may remove for gross immorality. I hold, however, that the accused must be given an opportunity to come in and offer testimony on the charges alleged against him."

One's Vital Error.

"The vital error made by the Courts of Justice Committee was to permit Judge Blackstone to appear and offer testimony prior to the giving of the twenty days' notice."

"Was not that Judge Blackstone's error, if it was an error?" asked Mr. Withers.

"No, it was not," replied Mr. Withers. "It was the error of the committee, too," replied Mr. Withers.

"Did Judge Blackstone protest against appearing at that time?" inquired Mr. Withers.

"No, sir," answered Mr. Withers.

"I beg your pardon," declared Mr. Withers. "He did protest."

"He appeared," observed Mr. Withers, "and by his own testimony admitted one of the charges against him."

Mr. Withers proceeded with his argument, and he and Mr. Massie engaged in a brief colloquy over an alleged confusion as to causes and charges. The former contended that there was no difference between the two terms.

He proposed this Legislature shall say, "I shall help to remove Judge Blackstone," and the latter contended that Judge Blackstone is an improper man for judge, and proceeds to remove him. The former contended that Judge Blackstone should proceed by a writ of quo warranto, the Court of Appeals will have to determine whether or not he has been properly removed. The latter contended that the resolution I have offered will cure this defect, and I wish to see it cured, so that when we take the final vote the case will be ended.

Afternoon Session.

The chair was vacated at 2 o'clock until 2:30 P. M., and when it was resumed to conclude his argument in favor of his resolution.

He was proceeding to amplify his views set out at the morning session, when he and Mr. Massie became involved in another running debate over the removal of Judge Blackstone, and finally, after a long colloquy, he was prevailed upon to withdraw from the floor.

"Up to this time," said Mr. Withers, "I have only ascertained alleged causes for the removal of Judge Blackstone, and my idea would be to have the Courts of Justice Committees hear and hear evidence to determine whether the alleged causes can be established. This testimony can be taken within twenty-four hours, and if we proceed in this manner the removal of Judge Blackstone will be final, but if we proceed as is proposed in the report of the Committee for Courts of Justice, we may remain on the floor for two years, when it is the will of the General Assembly to remove him."

"It is to remove Judge Blackstone that I am making this argument, but it is to prevent us from establishing a precedent here which will rise up to haunt us for years to come."

Mr. Caton, of Alexandria, followed. He opposed the report of the committee, and spoke in support of the resolution offered by Mr. Page. He ridiculed the assertion that a committee member of the committee that the two houses could allege as a cause that the accused was not heard, and proceeded to remove him or that the accused declared that the matter was a serious one, and should be treated seriously.

Judge Williams Spoke.

He spoke briefly along the line followed by Messrs. Withers and Page, and the speaker was Judge Martin Williams, who spoke strongly in support of the committee.

Judge Williams contended that the evidence adduced before the House committee was sufficient to prove the cause for removal of Judge Blackstone, and that Judge Blackstone had been given the benefit of every constitutional remedy to which he was entitled. He earnestly advocated the immediate adoption of the report, and declared that nothing was necessary now for a constitutional removal save the adoption of the report by the two houses. He wished to proceed regularly, but his contention was the present method was regular, and that no fault could be found with it. He was perfectly satisfied on this point, and was ready to vote at once.

Mr. Byrd (Mr. Stubbs in the chair) moved to adjourn until tomorrow.

"Mr. Speaker," he said in opening, "when lawyers disagree it is time for the exercising of a little common sense."

He contended the idea that the Legislature should proceed as a court, and contended that the procedure was put in place in its character.

"The learned judge in this case," he said, "is the defendant here," he continued, "and if we follow the procedure which his answer calls for, he could keep the case in court for months, and going over the State for months and months looking for witnesses, for there is no authority to limit a defendant to a number of witnesses he may summon."

Warned Against Trap.

"If we are a court we must act as a court, and if we act as a court we will not act at all. The learned judge would lead us into a trap. If we went into this trap the session would expire without action, and he would remain on the bench for the next session."

"When the Legislature does what the Constitution tells it to do its power in these cases is omnipotent, and it may remove a judge for any cause it may allege, and I am in favor of it. I favor the report of the committee. I am ready to act, and I want to act now."

The Constitution provides two things. One is to give the accused judge notice and the other to furnish him with copies of the alleged causes. The second thing the Legislature takes jurisdiction in the case, and acts upon its own responsibility. I do not acknowledge any right of the committee to act. I can say, if I have done my duty, I shall not discuss the evidence in this case, but I will say that I am in favor of such action as to warrant me in voting for the removal of the accused judge."

Mr. Byrd was interrupted by several members and his replies were quick and pointed.

"When doctors disagree," he said, "there is no other way but to let them when lawyers disagree, there is a chance for the eruption of common sense into the situation."

He contended that the evidence in the case was before the General Assembly he declared his final laughter.

"I am glad to know that it now as you will know if you live a hundred years, and you know that everybody knows you know it. That is where common sense comes in."

Thrill Concludes.

"The people of this State believe that a judge who has done that which this judge has done is not fit to wear the judicial ermine, and that it should be removed from his shoulders. I am in favor of taking it from him now, and I trust the House will adopt the report presented by the committee."

Byrd was roundly applauded as he concluded his speech, and he was followed by Messrs. Caton, Williams, and others. The report of the committee in an able legal argument of some length.

"I contend this," he said, "whether it is a question of legislative question or not, it is made so by the Constitution. Gentlemen have said we cannot use this evidence, because there is no authority to limit a defendant to a number of witnesses he may summon before the taking of evidence, and I defy any man to show me such a provision in the Constitution."

"I believe the evidence upon which the House committee has acted is sufficient to remove Judge Blackstone. There is no question about the power of the Legislature. The only question is whether the Legislature has acted in accordance with the evidence that has been taken."

Report Adopted.

Mr. Goodrich called the previous question, and the report of the committee was adopted by aye 22, noes 65.

That of Mr. Withers, which was defeated, was adopted by aye 22, noes 65.

Ayes—Messrs. Adams, Baker, Barrett, Bell, A. M. Bowman, B. B. Bowman, Breckenridge, Brewer, Brown, Caton, Chittenden, Churchman, Cline, Clement, Cook, Cornett, Cox, Craig, Curlett, John Orr Daniel, William B. Daniel, Dunn, Edwards, Eller, Evans, Featherstone, Good, Goodrich, Deskin Green, M. M. Hesse, Griffith, Hester, Giddens, Howie, Hunt, Janney, Jett, Charles A. Johnston, Lewis, Lunderback, F. M. Love, S. H. Love, Markham, Massie, McDaniel, Mendenhall, Montgomery, Myers, Nolting, Old, Oliver, J. J. Owen, E. Owens, Page, Pendleton, Pitts, Powell, Powers, Pulliam, Read, Row, Shead, Shead, Strode, Strode, Strode, Stuart, Sturt, Surritt, Sydnor, Sylvester, Tallafere, Thrift, Throckmorton, Tyler, Walker, T. Whitehead, Wilcox, J. W. Williams, Withers, Wood and Mr. Speaker—8.

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Noes—Mr. Sutherland—1.

Ayes—Messrs. Adams, Baker, Barrett, Bell, A. M. Bowman, B. B. Bowman, Breckenridge, Brewer, Brown, Caton, Chittenden, Churchman, Cline, Clement, Cook, Cornett, Cox, Craig, Curlett, John Orr Daniel, William B. Daniel